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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**STB FINANCE DOCKET NO. 35205**

**U S RAIL CORPORATION**

**- LEASE AND OPERATION EXEMPTION -**

**WINAMAC SOUTHERN RAILWAY COMPANY AND KOKOMO GRAIN CO., INC.**

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**REPLY OF U S RAIL CORPORATION TO  
PETITION FOR STAY**

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**Dated: January 13, 2009**

**Attorneys for U S RAIL Corporation**

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PETITION FOR STAY**

This Reply is filed by U S RAIL Corporation ("US Rail") in response to the Petition for Stay filed by Toledo, Peoria & Western Railway Corporation ("TPW") on January 9, 2009. The Notice of Exemption filed by US Rail in this proceeding sought an exemption to lease and operate four lines of railroad totaling 58.89 miles. *See U S RAIL Corporation – Lease and Operation Exemption – Winamac Southern Railway Company and Kokomo Grain Co., Inc.*, STB Finance Docket No. 35205 (served December 31, 2008). The Notice of Exemption also sought the assignment of 3.0 miles of incidental trackage rights over lines in Logansport Yard now owned by TPW. The TPW Petition for Stay seeks *only* to stay the exemption sought by US Rail as it relates to the incidental trackage rights to be assigned to US Rail over the TPW lines. *See TPW Petition for Stay* at p. 1.<sup>1</sup>

The trackage rights to be assigned to US Rail were the subject of a separate proceeding before the Board. *Winamac Southern Railway Company – Trackage Rights Exemption – A&R Line, Inc.*, STB Finance Docket No 35208. On January 9, 2009, the Board dismissed the trackage rights notice, finding that it was not in a position to determine the contractual issues raised in that proceeding. Despite TPW's allegation that it sought to stay the trackage rights notice to avoid

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<sup>1</sup> TPW acknowledges that US Rail can continue to operate the other lines without the trackage rights. *See TPW Petition for Stay*, Section 3, at 8-9.

litigation, US Rail expects that the Board's decision will necessarily lead to litigation in Indiana state courts over the validity and assignability of the trackage rights agreement, and to the filing with the Board of a petition for exemption.<sup>2</sup>

US Rail believes that the trackage rights agreement is valid and assignable, and disagrees with the Board's decision to dismiss the trackage rights exemption. However, given the decision, US Rail agrees that a stay of its exemption solely as it relates to the assignment of the incidental trackage rights over TPW would be appropriate. After the rights of the parties under the trackage rights agreement are finally determined, the Board will be in a position to either lift the stay, and allow the assignment to become effective or dismiss the exemption as it relates to the trackage rights.

Since no stay was filed with respect to the operation of the other four lines of railroad, the exemption as it relates to those lines should become effective on January 16, 2009 as scheduled.

Respectfully submitted,



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<sup>2</sup> The "termination letter" attached to the TPW Petition for Stay as Exhibit A, indicates that TPW is willing to negotiate a new trackage rights arrangement. To-date, however, TPW has not responded to US Rail's expression of interest in doing so. A negotiated solution would of course eliminate the need for additional litigation before the courts and/or the Board.


### **Certificate of Service**

I hereby certify that on this date a copy of the foregoing Reply to Petition for Stay was served electronically on the following:

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Dated: January 13, 2009

  
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